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Attorneys For Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Plaintiff,

v.

COLUMBIAN HOME PRODUCTS, LLC, and
WILLIAMS-SONOMA, INC.,

Defendants.

ENDORSED
FILED
San Francisco County Superior Court

FEB 24 2009

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

Case No. 08-473336

~~PROPOSED~~ CONSENT
JUDGMENT

1. INTRODUCTION

1.1 On March 14, 2008, the Mateel Environmental Justice Foundation ("Plaintiff MEJF") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. CGC-08-473336, against defendant Columbian Home Products, LLC, (referred to as "Columbian Home Products"

1 or "Defendant"). The Complaint alleges, among other things, that Defendant violated provisions
2 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections
3 25249.5, et seq. (Proposition 65) by failing to give clear and reasonable warnings to those
4 residents of California who handle, use or consume beverages and food made in or served from
5 pots used to steam lobsters and/or other shellfish that utilize leaded brass valves or stopcocks, that
6 handling and use of these products causes those residents to be exposed to lead and/or lead
7 compounds. Lead is known to the State of California to cause cancer and/or birth defects or other
8 reproductive harm. The Complaint was based upon a 60-Day Notice letter, dated December 5,
9 2007, sent by MEJF to Columbian Home Products, the California Attorney General, all District
10 Attorneys, and all City Attorneys with populations exceeding 750,000.

11 1.2 Defendant is a business that employs more than ten persons, and manufactures,
12 distributes, and sells pots used to steam lobsters and/or other shellfish ("Lobster Pots"). At the
13 time the complaint was filed in this action, some of Defendant's Lobster Pots utilized leaded
14 brass valves and/or stopcocks. Pursuant to Health and Safety Code Section 25249.8, lead and
15 lead compounds are chemicals known to the State of California to cause cancer and reproductive
16 toxicity. Plaintiff MEJF alleges that Lobster Pots with leaded brass valves and/or stopcocks that
17 are sold by Columbian Home Products for use in California require a warning under Proposition
18 65, pursuant to Health and Safety Code Section 25249.6. Columbian Home Products denies that
19 a warning is required. For purposes of this Consent Judgment, the parties stipulate that this Court
20 has jurisdiction over the allegations of violations contained in the Complaint and personal
21 jurisdiction over Columbian Home Products as to the acts alleged in the Complaint, that venue is
22 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
23 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
24 all claims which were or could have been raised by any person or entity based in whole or in part,
25 directly or indirectly, on the facts alleged therein or arising therefrom or related to.

26 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
27 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
28 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment

1 shall not constitute an admission with respect to any material allegation of the Complaint, each
2 and every allegation of which Columbian Home Products denies, nor may this Consent Judgment
3 or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability
4 on the part of Columbian Home Products.

5 1.4 For purposes of this Consent Judgment, the term "Covered Products" means
6 Lobster Pots as described in paragraph 1.2 that contain one or more components manufactured
7 from brass.

8 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

9 **2. SETTLEMENT PAYMENT**

10 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the
11 Complaint concerning Covered Products, Columbian Home Products shall pay \$25,000 to the
12 Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally,
13 Columbian Home Products shall pay \$5,000 to the Ecological Rights Foundation and \$5,000 to
14 Californians for Alternatives to Toxics, for use toward reducing exposures to toxic chemicals and
15 other pollutants, and toward increasing consumer, worker and community awareness of health
16 hazards posed by lead and other toxic chemicals. The parties agree and acknowledge that the
17 charitable contributions made pursuant to this section shall not be construed as a credit against the
18 personal claims of absent third parties for restitution against the defendant. The above described
19 payments shall be forwarded by Defendant so that they are received at least 5 days prior to the
20 hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is not
21 approved with 120 days of the date scheduled for approval, the above described payments shall
22 be returned and the provisions of this Consent judgment shall become null and void.

23 2.2 Columbian Home Products shall not be required to pay a civil penalty pursuant to
24 Health and Safety Code Section 25249.7(b).

25 **3. ENTRY OF CONSENT JUDGMENT**

26 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
27 Upon entry of the Consent Judgment, Columbian Home Products and MEJF waive their
28 respective rights to a hearing or trial on the allegations of the Complaint.

1 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

2 4.1 This Consent Judgment is a final and binding resolution between MEJF, acting on
3 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) the general public, and
4 Columbian Home Products of: (i) any violation of Proposition 65 (including but not limited to the
5 claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest
6 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any
7 person or entity against Columbian Home Products or its parents, subsidiaries or affiliates, and all
8 of their suppliers, customers, distributors, wholesalers, retailers, or any other person in the course
9 of doing business, and the successors and assigns of any of them, who may use, maintain,
10 distribute or sell Covered Products ("Released Entities"), based on its or their exposure of persons
11 to lead or lead compounds from Covered Products or their failure to provide a clear and
12 reasonable warning of exposure to such individuals; and (iii) as to alleged exposures to lead or
13 lead compounds from Covered Products, any other claim based in whole or in part on the facts
14 alleged in the Complaint, whether based on actions committed by the Released Entities or others.
15 As to alleged exposures to lead or lead compounds from Covered Products, compliance with the
16 terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance
17 by Columbian Home Products and the Released Entities, with the requirements of Proposition 65
18 with respect to Covered Products, and any alleged resulting exposure. Notwithstanding any other
19 provision of this Consent Judgment, any and all releases on behalf of the general public, are
20 limited to the claims made and the chemicals identified in the 60-Day Notice Letter.

21 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,
22 by and on behalf of itself and its respective agents, successors and assigns, waives any and all
23 rights to institute any form of legal action, and releases all claims against Columbian Home
24 Products and the Released Entities, and all of their respective parents, subsidiaries or affiliates,
25 and all of their suppliers, customers, distributors, wholesalers, retailers, or any other person in the
26 course of doing business, and the successors and assigns of any of them, who may use, maintain,
27 distribute or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of
28 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,

1 including but not limited to any exposure to, or failure to warn with respect to, the Covered
2 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the
3 foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights
4 and benefits which it now has, or in the future may have, conferred upon it with respect to the
5 Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as
6 follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
9 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
10 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
11 DEBTOR.

12 4.3 MEJF understands and acknowledges that the significance and consequence of this
13 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
14 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
15 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
16 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for
17 those damages against Columbian Home Products or the Released Entities. Furthermore, MEJF
18 acknowledges that it intends these consequences for any such Claims as may exist as of the date
19 of this release but which MEJF does not know exist, and which, if known, would materially affect
20 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge
21 is the result of ignorance, oversight, error, negligence, or any other cause.

22 **5. ENFORCEMENT OF JUDGMENT**

23 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
24 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
25 San Francisco County, giving the notice required by law, enforce the terms and conditions
26 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
27 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the
28 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
comply in an open and good faith manner.

1 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment.

4 **6. MODIFICATION OF JUDGMENT**

5 6.1 This Consent Judgment may be modified only upon written agreement of the
6 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 6.2 If, with respect to brass containing lead, the Attorney General of the State of
9 California or Plaintiff permit any other reformulation standard by way of settlement or
10 compromise with any other person in the course of doing business, or any other entity, or if
11 another reformulation standard for brass is incorporated by way of final judgment as to any other
12 person in the course of doing business, or any other entity, then Defendant is entitled to seek a
13 modification to this Consent Judgment on the same terms as provided in those settlements,
14 compromises or judgments.

15 **7. INJUNCTIVE RELIEF - REFORMULATION**

16 7.1 On and after the Effective Date, the materials used in the manufacturing of all
17 Covered Products sold by Columbian Home Products for resale or use in California shall not
18 contain lead or lead compounds.

19 **8. TERMINATION AND RETENTION OF JURISDICTION**

20 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
21 terms this Consent Judgment.

22 **9. AUTHORITY TO STIPULATE**

23 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
25 the party represented and legally to bind that party.

26 **10. DUTIES LIMITED TO CALIFORNIA**

27 10.1 This Consent Judgment shall have no effect on Covered Products sold by
28 Columbian Home Products outside the State of California.

1 **11. SERVICE ON THE ATTORNEY GENERAL**

2 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the
3 California Attorney General on behalf of the parties so that the Attorney General may review this
4 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
5 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
6 and in the absence of any written objection by the Attorney General to the terms of this Consent
7 Judgment, the parties may then submit it to the Court for approval.

8 **12. ENTIRE AGREEMENT**

9 12.1 This Consent Judgment contains the sole and entire agreement and understanding
10 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the parties.

15 **13. GOVERNING LAW**

16 13.1 The validity, construction and performance of this Consent Judgment shall be
17 governed by the laws of the State of California, without reference to any conflicts of law
18 provisions of California law.

19 **14. EXECUTION AND COUNTERPARTS**

20 14.1 This Consent Judgment may be executed in counterparts and by means of
21 facsimile, which taken together shall be deemed to constitute one document.

22 **15. COURT APPROVAL**

23 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
24 no force or effect, and cannot be used in any proceeding for any purpose.

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1 **16. NOTICES**

2 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
3 Class Mail.

4 If to MEJF:

William Verick, Esq.
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

7 If to Columbian Home
8 Products:

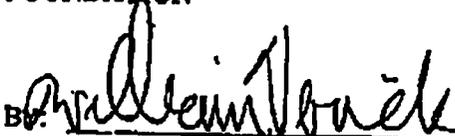
Christopher J. Nevis
Helen Lee Greenberg
LEWIS BRISBOIS BISGAARD & SMITH LLP
One Sansome Street, Suite 1400
San Francisco, CA 94104

11 Everette Hinson
12 Columbian Home Products, LLC
13 550 North Rand Road
14 Lake Zurich, IL 60047

14 IT IS SO STIPULATED:

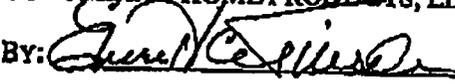
15 DATED: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

17 BY: 
18 WILLIAM VERICK

20 DATED: _____

COLUMBIAN HOME PRODUCTS, LLC

21 BY: 
22 ITS: CFO

24 IT IS SO ORDERED, ADJUDGED AND DECREED:

25 DATED: _____

27 JUDGE OF THE SUPERIOR COURT

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16. NOTICES

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If to MEJF: William Verick, Esq.
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

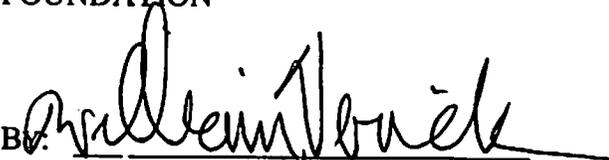
If to Columbian Home Products: Christopher J. Nevis
Helen Lee Greenberg
LEWIS BRISBOIS BISGAARD & SMITH LLP
One Sansome Street, Suite 1400
San Francisco, CA 94104

Everette Hinson
Columbian Home Products, LLC
550 North Rand Road
Lake Zurich, IL 60047

IT IS SO STIPULATED:

DATED: 1/9/09

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

By: 
WILLIAM VERICK

DATED: _____

COLUMBIAN HOME PRODUCTS, LLC

By: _____

Its: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: FEB 24 2009

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT